

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of WILLIE ZIAIRE CLAYBREN
and JAZZMINE LEE CLAYBREN, Minors.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

TASHAWAN CLAYBREN,

Respondent-Appellant,

and

MICHAEL DENNIS,

Respondent.

In the Matter of WILLIE ZIAIRE CLAYBREN and
JAZZMINE LEE CLAYBREN, Minors.

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

v

MICHAEL DENNIS,

Respondent-Appellant,

and

TASHAWAN CLAYBREN,

UNPUBLISHED
March 21, 2006

No. 264564
Macomb Circuit Court
Family Division
LC No. 2003-055500-NA

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Respondent.

Before: Davis, P.J., and Cavanagh and Talbot, JJ.

PER CURIAM.

In these consolidated appeals, respondent mother appeals as of right from the trial court order terminating her parental rights to both children under MCL 712A.19b(3)(c)(i), (g), and (j). Respondent father appeals as of right from the trial court order terminating his parental rights to Willie under MCL 712A.19b(3)(a)(ii), (c)(i), (g), and (j). We review for clear error, *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004), and we affirm.

To terminate a parent's parental rights, the petitioner must establish the existence of at least one statutory condition, as set forth in MCL 712A.19b(3), by clear and convincing evidence. *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003). The statutory sections of MCL 712.19b(3) pertinent to both respondents provide:

(a) The child has been deserted under any of the following circumstances:

* * *

(ii) The child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period.

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

The primary conditions leading to adjudication for respondent mother were her substance abuse, lack of employment, and lack of stable housing. During the nearly two years in which the children were in foster care, the longest period of time in which respondent mother remained substance free was three months, although she claimed to have been sober for six weeks at the time of trial. She had been unemployed for more than six months before trial. Although she testified that she had just started a new job the week before trial, she could not support her children with the earnings from her new job. She also testified that her housing during the pendency of the case was inappropriate for her children, and she had moved into appropriate housing just six weeks before trial. The trial court had given respondent mother adjournments to allow her to show a longer period of sobriety and for her to maintain employment and housing, but respondent mother was unable to do so. Therefore, the trial court did not clearly err in finding that the conditions leading to adjudication continued to exist and that there was no reasonable likelihood that they would be rectified within a reasonable time considering that the children, ages six and seven, had already been in foster care for almost two years. Further considering respondent mother's substance abuse and housing and employment instability, the trial court also did not clearly err in finding that respondent mother did not provide proper care and custody for her children and that she would not be able to do so within a reasonable time.

The conditions leading to adjudication for respondent father were his failure to provide proper care and custody for Willie. He made no progress toward providing a home for Willie by the time of trial, nearly one year after he appeared in the case, and he did not participate in the parent-agency agreement or visit Willie. Further, even if the trial court started counting on November 16, 2004, the first court date after the paternity test revealed that respondent father was Willie's biological father, respondent father still did not attend court hearings or make any attempt to contact the foster care worker or to see Willie until he appeared in court on May 10, 2005, a period of well over 91 days. The trial court did not clearly err in finding that respondent father had deserted Willie and that the conditions leading to adjudication continued to exist and would not be rectified within a reasonable time.

The trial court also did not clearly err in its best interests determination regarding both respondents. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 344; 612 NW2d 407 (2000). Considering respondent mother's failure to alleviate her substance abuse during this case, the lack of stable housing and employment, and her inconsistent visitation with the children, the trial court did not err in concluding that the children's best interests did not preclude termination of her parental rights. Respondent father had made no progress toward providing a stable environment for Willie in the almost one year he had been involved in the case. Respondent father did not participate in the parent-agency agreement, testified that he was too tired after work to call the foster care worker regarding services, and did not visit Willie. Given that nearly two years that passed without respondent father seeing Willie, the trial court did not clearly err in its best interests determination.

Respondent father also argues that the trial court erred by failing to advise him of his right to counsel at his first appearance and by failing to appoint counsel to him at that date, as required by MCR 3.915(B)(1)(a) and (b). However, respondent father was not a "respondent" when he first appeared because his paternity had not been established and he had not otherwise legally recognized Willie as his son. MCR 3.903(A)(7). At respondent father's first appearance

after a paternity test established that he was Willie's biological father, the trial court immediately appointed counsel for him. Therefore, there was no violation of MCR 3.915(B)(1)(a) and (b).

Affirmed.

/s/ Alton T. Davis
/s/ Mark J. Cavanagh
/s/ Michael J. Talbot